

If a sale is made in a jurisdiction that imposes a local occupation tax, that local jurisdiction's tax will be incurred. See 86 Ill. Adm. Code 270.115(b). (This is a GIL.)

October 22, 2007

Dear Xxxxx:

This letter is in response to your letter dated March 1, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We have received conflicting information over the years from employees at the IDOR concerning sales tax status and need an authoritative ruling in writing as to the correct procedure for our business to collect sales tax. The issue is at hand again as a customer has questioned the sales tax rate we charged on our invoicing to them.

Let me describe our business. We are an Illinois corporation with our only office located in Machesney Park, IL. We sell, install, and service security and bank equipment. We make sales and install & service customers in Northern Illinois and some of southern Wisconsin (we collect sales tax and file with Wisconsin DOR separately).

We typically install the products we sell but we also make 'box' sales in which we either have our distributor drop ship or we deliver the product to the customer. We typically receive all of the products we sell from our distributors at our CITY location. We do not have a storefront and we rarely receive customers in our office. A typical sale is made after meeting the customer at their location, mailing or faxing them a proposal, at which point they fax back approval to us to complete the sale.

Let me describe how we are currently set up. We are set up as a retailer and file ST-1 on a monthly basis. We originally were set up as a multiple location retailer, adding new locations as sales were made and charging that location's city/county tax rates on products sold to them. However, two years ago we were told by IDOR in a phone

conversation that because we operated from a single location all sales should be considered as being sold from our office in Machesney Park; at that time we changed back to a single location filer. We do not charge tax on our installation or repair service labor, and charge 7.25% tax on everything else that we sell whether it is repair parts or new equipment.

In 2006 we had equipment sales of \$332,000 which includes resale and interstate commerce, and \$323,000 of installation and service labor sales.

The customer in question was invoiced for installations of product in CITIES. We charged 7.25% on the product, and they say their accounting department claims it should be only 6.25% because we do not have a storefront.

Please advise as to whether we are treating our sales taxes correctly, and if we need to change please advise us how to do so.

DEPARTMENT'S RESPONSE

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b). The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. As you noted, the sales tax rate for general merchandise in Machesney Park, Illinois is 7.25%.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. For the retail sales as described in your letter, the local taxes applicable to those sales will depend upon where your company is actually accepting those orders.

Please note that if the agreement with the customer requires your company to install the items it has sold for one specified contract price, your company may be acting as a construction contractor and incur different tax liabilities. Construction contractors who contract for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems incur Use Tax, rather than Retailers' Occupation Tax, liability on those items if they are sold at one specified contract price. See 86 Ill. Adm. Code 130.1940(c)(3). This provision applies to all of the items described in subpart (c)(3) even if they are not incorporated into real estate.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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